

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 890 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

LAXMANBHAI LAKHABHAI BARIA

Versus

STATE OF GUJARAT

Appearance:

MR JM BUDDHBHATTI FOR MR MJ BUDDHBHATTI for Petitioners
MR KC SHAH, APP, for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.L.DAVE

Date of decision: 09/09/98

ORAL JUDGEMENT (Per A.L. Dave, J.)

1. All the appellants were accused of having committed murder of one Ramabhai Panabhai Luhar on 2nd December, 1991, at about 9.00 P.M., at Sukatimba of Panchmahals district. They were tried at the Sessions Court, Panchmahals vide Sessions Case No.7 of 1992 and the learned Trial Judge, by his judgment and order dated

14th September, 1992, convicted accused Nos.1 and 2 for the offence punishable under Section 302 of Indian Penal Code and accused No.3 for offence punishable under Section 302 read with Section 114 of Indian Penal Code. Accused Nos.1 and 2 were also convicted under Section 323 of I.P.C. for causing injury to Bai Jashoda. All the appellants were sentenced to undergo life imprisonment and each of them was fined Rs.1000/- and were ordered to undergo further imprisonment for three months in case of default in payment of fine. Appellants No.1 and 2 were also sentenced to undergo simple imprisonment for one month under Section 323 of I.P.C. Both the sentences were ordered to run concurrently. The said judgment and order of learned Sessions Judge, Panchmahals, at Godhra is under challenge in this appeal.

2. Brief facts of the case are that, deceased-Ramabhai was a blacksmith. Injured Jashodaben is his wife. Deceased-Ramabhai used to lead an unstable life, moving from village to village exploring the possibility of settling down. Appellant No.2-Ladubhai Lakhabhai asked him to come to his home town-Sukatimba and settle down. Though reluctantly, deceased agreed to this proposition and shifted to Sukatimba some time before the incident occurred. The deceased was given shelter by accused No.1-Laxmanbhai Lakhabhai. It is the case of the prosecution that appellant No.2-Ladubhai had borrowed Rs.2000/- from the deceased for a period of about a month and, thereafter, brother-in-law of Jashodaben came to the deceased and requested for a loan of Rs.2500/- for meeting with the expenses of marriages of his son and daughter. The deceased told him to come after a couple of days and, on the other hand, demanded money from appellant No.2-Ladubhai. Appellant No.2 had grievance against the deceased as the deceased had demanded the money before completion of the term for which it was lent. On the day of incident, i.e. on 2nd September, 1991, appellant No.2 went to the place where the deceased and Jashodaben were staying. He was equipped with a stick. The deceased was lying down on a cot. Appellant No.2, without saying anything, gave a blow with the stick on the head of the deceased. At that time, appellant No.1 also arrived equipped with a stick and he also gave a stick blow on the back of the deceased. Bai Jashoda, therefore, tried to rescue her husband and, in that transaction, she also was beaten by the accused persons. Appellant No.3-Kohyabhai had, by then arrived and was instigating appellants No.1 and 2 to finish the deceased. Bai Jashoda, therefore, raised shouts and, therefore, Chandubhai and Parbatbhai came there and relieved them of the beating. Thereafter,

Chandubhai and Parbatbhai went away. Next day, in the morning, Jashoda tried to take her husband to the hospital. She needed a vehicle therefor, but nobody helped. Ultimately, her husband succumbed to the injuries at about 11.00 A.M. She, therefore, went to the Police Outpost at Gothib, falling within the jurisdiction of Santrampur Police Station and lodged her complaint. The complaint was recorded by P.S.I. Pargi. The offence was registered, matter was investigated and having found sufficient material against the accused, the police charge sheeted all the three accused persons. At the trial, all the three pleaded not guilty and expressed their desire to face the trial. The learned Trial Judge, after considering the evidence led by the prosecution, came to a conclusion that the case against the accused persons was fully established by the prosecution and, therefore, recorded the judgment and order of conviction. Being aggrieved by the said judgment and order, the original accused persons have preferred this appeal.

3. Mr. J.M. Buddhbhatti, learned advocate appearing on behalf of Mr. M.J. Buddhbhatti for the appellants submitted that the entire prosecution case hangs on sole testimony of Jashodaben. There is no other supporting evidence emerging from the prosecution case and if the testimony of this witness is considered in light of the other evidence led by the prosecution, it is amply clear that the entire prosecution case and evidence is under a dark shadow of doubt. The learned Sessions Judge has not considered this aspect and has recorded the judgment and order of conviction. Mr. Buddhbhatti submitted that the deposition of Bai Jashoda goes counter to her complaint. If the F.I.R. and her deposition are considered together, the entire prosecution case comes under the shadow of doubt as to its origin and the sequence of incidents. It becomes doubtful as to whether incident occurred on 2nd September or on 4th September and whether the incident occurred in the evening or at midnight or at 11.00 A.M. The medical evidence does not support the ocular evidence. Mr. Buddhbhatti submitted that, apart from these basic defects, the prosecution has failed to lead independent and cogent evidence, although it was available. The independent witnesses have not supported the prosecution case. Although, according to Bai Jashoda, who is the sole eye-witness, the deceased was badly beaten and he was bleeding profusely, no blood stains are found on any of the sticks. Likewise, although Bai Jashoda claims to have sustained injuries in the incident, there is no supporting medical evidence coming on record and, therefore, the learned Sessions Judge ought to have given benefit of doubt to the accused

and acquitted them. Mr. Buddhbhatti, therefore, urged that the appeal may be allowed by setting aside the judgment and order of conviction recorded by the learned Sessions Judge and the appellants be acquitted.

4. Mr. K.C. Shah, learned Additional Public Prosecutor, has tried to support the impugned judgment. He submitted that if the inquest Panchnama is perused, it indicates that there was a bandage applied to the back of the deceased. It is the case of Bai Jashoda that she had been to a doctor in the morning and brought bandage for her husband and she herself applied it to him. The Panchnama corroborates the version of Bai Jashoda. Mr. Shah submitted that Bai Jashoda was a stranger to the village. She and her husband had recently shifted to that village and her husband was done to death before her own eyes and, therefore, she may have been disturbed and may have committed some mistakes here and there in sequence of incidents or about the timing. The plight of a solitary lady may not be lost sight of in such an incident. The learned trial Judge has kept all these aspects in mind and has, ultimately, passed the impugned judgment and order which cannot be considered to be erroneous or illegal in any manner. The evidence led by the prosecution is strong enough to be upheld. He, therefore, urged that the appeal may be dismissed.

5. We have carefully gone through the evidence on record. It transpires that the prosecution case hangs mainly on deposition of Bai Jashoda. She is the person who lodged the information, she is the person who is an eye-witness and she is the person who has also sustained injury in the incident. Her deposition is recorded at Ex.15. She says that her husband Ramabhai was a blacksmith and before going to Sukatimba, he was working at Janvad. Accused-appellant No.2 persuaded the deceased to shift to Sukatimba. Accused No.2, thereafter, borrowed Rs.2000/- from her husband for a term of one month.

5.1 The incident occurred on 2nd September, 1991 at midnight. On that day, earlier in the morning, her brother-in-law had come from Chikhli with a request for money. Her husband told him to come after two days. So he went back to Chikli. After taking meals on that day, when she and her husband were sitting, appellant No.2 came there with a stick. Her husband was sleeping on the cot and appellant No.2, after coming, without saying anything, gave a stick blow on head of her husband. At that time, appellant No.1 came and he also gave a stick blow. She, therefore, intervened to rescue her husband

and both of them gave her stick blows. She, therefore, raised shouts. Therefore, Chandubhai and Parbatbhai came there. Their spouses also came. After relieving them, Chandubhai and Parbatbhai went away. Next day, she tried for taking her husband to the hospital. She was threatened by appellants No.1 and 2 that she would meet the same end if she takes her husband to the hospital. Chandubhai suggested to take the deceased to a hospital in a tractor but the owner of the tractor refused to help her, as he was also threatened by the appellants. She, therefore, came back to her house at about 10.00 A.M. and her husband expired within an hour thereafter. She says that she had gone to the doctor at Janvad for medicine and he had offered a bandage which she had applied to her husband. Then she went to Gothib and lodged the information. During cross-examination, she states that they had shifted to Sukatimba about two months prior to the incident. After about a month after coming to Sukatimba, Rs.2000/- were given to appellant No.2. The money was demanded by her husband after one month. During cross-examination, she appears to have given an imaginary picture of the incident and the injury caused to her husband. She states that the incident had occurred at about 2.00 A.M. in the night. She says that she had lodged the information on the very next day in the afternoon. She says that many people had gathered on her raising alarm. They had also intervened and they also sustained injuries. Two of them were Chandubhai and Parbatbhai. They both sustained injuries on their cheek and there were injury marks and swelling. She admits that on the day of the incident, there was another incident at about 5 to 6 P.M. wherein also her husband was beaten and had sustained injury in the back. Her brother-in-law was there at that time and he had left after that incident.

6. In light of this deposition, Chandubhai and Parbatbhai are the persons who had come to the spot, rescued and sustained injuries. Out of these witness, Chandubhai is examined at Ex.21. He does not support the story of the complainant as emerging from her deposition. He says that on 2nd September, 1991, he was at his house in the evening. At that time, Bai Jashoda came to his house and told him that there is a quarrel between her brother-in-law and accused Nos. 1 and 2. He, therefore, went there and calmed them. At that time, deceased-Ramabhai was also there. It was about 6.00 P.M. then. Again at 8.00 P.M. in the evening, there was some altercation. So he went there along with Parbatbhai, Fulabhai, etc. He found that Bai Jashoda, her husband and their children were there. Neither any of the

accused nor the brother-in-law of Bai Jashoda was present. Ramabhai was lying down on the cot. Next day, at about 9.00 A.M. Jashodaben came to his house. Her husband Ramabhai was also with her. They wanted to go to hospital for treatment and, therefore, he suggested to go to the hospital at Sanjeli either by a cart or by a tractor. But because they did not have the money to pay the hire charges, he told that he would help them in paying the hire charges and, thereafter, both went away. On the 4th day, thereafter, Ramabhai expired. This witness does not support the prosecution case and, as such, an attempt is made by the prosecution to cross-examine and contradict him, but no material information comes out of his cross-examination to the Public Prosecutor. During cross-examination to the defence, he states that Bai Jashoda had told him that her husband and her brother-in-law had quarrelled for money.

7. No other witness having any knowledge about the incident has been examined. Thus, it is apparent that the version of complainant-Jashodaben is not supported by witness Chandubhai and he comes with an altogether new story. Now, therefore, the First Information lodged by Bai Jashoda will have to be perused to know as to what could have happened or to know whether the witnesses are telling the truth. The F.I.R. is produced at Ex.24. It indicates that, it was given on 4th September, 1991 and surprising enough, it indicates that the incident occurred at 11.00 A.M. on 4th September, 1991 and the offence was registered at 15.15 hours. According to the complaint, Bai Jashoda states that they had shifted from Janvad to Sukatimba about a week earlier. She states that on 2nd September, 1991, her brother-in-law Kuber Rughnath had come from Chikhli and told her husband that he needed Rs.2500/- to meet with the expenditure of marriages of his daughter and son. Her husband said that he did not have money at that time, but he had lent Rs.2000/- to appellant No.2, which he will call for and give it to him. Her husband then told appellant No.2 to repay the amount, who in turn, said that he will return the money. Thereafter, appellant No.2 came with a stick and told her husband as to why is he demanding the money at such a short notice when he had given him money for a longer term and then started giving stick blows to her husband. She, therefore, intervened. Appellant No.2, therefore, gave Lathi blow to her also. Around that time, appellant No.1-Laxmanbhai Lakhabhai came from his house and he also started beating her husband with stick. At that time, appellant No.3-Kohyabhai also came and he started instigating appellants No.1 and 2. This incident took place at about 9.00 P.M. She says that she tried to

take her husband to the hospital on the next day, but because of the threats given by the accused persons, she could not do so although she had earlier gone to the hospital and brought some medicines. According to her, Ramabhai succumbed to the injuries at about 11 o' clock on that day. She, therefore, went to Gothi and lodged the information.

8. The scenario that emerges is that there is contradiction about the date and time of incident emerging from the F.I.R. and the deposition of Jashoda. It is doubtful whether the incident took place on 2nd September, 1991 or 4th September, 1991. It is doubtful whether the incident took place at about 8.00 or 9.00 P.M. or at 2.00 A.M. It is also a matter of doubt as to really whether the incident was witnessed by Chandubhai because he does not say anything about the incident that is described by Bai Jashoda. He does not say about any injury caused to him in an attempt by him to rescue Bai Jashoda and her husband-deceased Ramabhai, which is the say of Bai Jashoda. Another witness-Parbatbhai is not examined at all.

9. It is to be considered that as per deposition of Bai Jashoda, the accused gave indiscriminate beating for about an hour and a half. She gives a version of injuries which finds no corroboration from the medical evidence. In her deposition, she says that accused No.2 came and straight-away gave a stick blow without saying anything. In her complaint, she says that accused No.2 spoke to her husband about the calling back of money at a short notice.

9.1 According to her, the incident took place on 2nd September, 1991 either at 8.00 or 9.00 P.M. or at about 2.00 A.M. at night and in the next morning, she tried to take her husband to the hospital, which she could not do and her husband died and she, therefore, went to police and lodged the information. If that be so, the F.I.R. should be dated 3rd September, 1991. Instead, if we see the F.I.R., it is dated 4th September, 1991 and in that F.I.R., she says that her husband expired at 11 o'clock on that day, i.e. on 4th September, 1991 and not on 3rd September, 1991.

10. It is, therefore, clear that Bai Jashoda, for the reasons best known to her, is not coming with a clear and consistent version. For whatever reasons, she is trying to hide the incident that occurred between her husband and her brother-in-law or her brother-in-law and accused Nos.1 and 2, about which Chandubhai deposes. She is not

consistent even about her shifting to village Sukatimba. In her deposition she says that they had shifted about 2 months prior to the incident and one month, thereafter, her husband had lent money to accused-appellant No.2. As against that, in the F.I.R. she says that they had shifted to Sukatimba about a week before her lodging the complaint, at the instance of accused-appellant No.2. Thus, the lady is not giving correct version about the origin of the incident and its sequence.

11. With this major discrepancy in the prosecution case, if the medical evidence is perused, it transpires that postmortem was performed on 4th September, 1991 at 16.30 hours. Dr. Mohmad Usman, Ex.19, who had performed the postmortem says that the injuries that were found on person of the deceased were about 48 hours old. If that is considered, that would lead us to 16.30 hours or thereabout of 2nd September, 1991, which is not the time of incident either emerging from F.I.R. or from deposition of Bai Jashoda or from deposition of Chandubhai. So, this further confuses the prosecution evidence. This doctor further says that the deceased expired six hours prior to the postmortem examination. If that be so, that would relate us back to 10.00 A.M. on 4th September, 1991, which is not the case of Bai Jashoda in her deposition because she says that the incident occurred on 2nd September, 1991~ and her husband expired in the next morning, i.e. on 3rd September, 1991.

12. Another short coming of the prosecution case that is emerging is that, although Bai Jashoda claims that she had sustained injuries at the time of incident, she has herself not taken any medical treatment and no medical evidence is produced.

13. Thus, it is found that the prosecution case suffers from basic infirmities. It hangs on deposition of solitary eye-witness whose deposition is found to go counter to her complaint, whose deposition does not inspire confidence because of conflicting versions given by her and who gives an impression that she wants to hide certain material aspects of the incident affecting the genesis and sequence of the incident. The version given by such solitary eye-witness is not supported by a witness, who, according to her, is an eye-witness. The medical evidence does not lend corroboration to the version of this solitary eye-witness Bai Jashoda. The sum total of the above circumstances is that, it cannot be concluded that the prosecution could prove the guilt of the accused beyond reasonable doubt. It is true that

there is no need for any corroboration for basing conviction upon deposition of a solitary eye-witness. But in such an event, the deposition of such solitary eye-witness must be of a dependability of a sterling quality and should not leave slightest doubt in the mind of the Court. As discussed above, no dependable evidence is found and, as such, the appeal merits allowance and the judgment and order impugned in this appeal needs to be set aside while recording acquittal of the appellants.

14. In the result, the appeal is allowed. The judgment and order dated 14th September, 1992, passed by the learned Sessions Judge, Panchmahals, at Godhra, in Sessions Case No.7 of 1992 is hereby set aside. The appellants are hereby ordered to be released forthwith, if not required in any other case. The amount of fine, if paid, be refunded to the them.

[J.N. BHATT, J.]

[A.L. DAVE, J.]

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